

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: arl-pf-npfclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8047

5890/DWHZ
08 December 2011

Michael Rodriguez
[REDACTED]

Re: Claim Number: N10036-1559

Dear Mr. Rodriguez:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim number N10036-1559 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. If, however you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request.

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-1559.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1559
Claimant	Michael Rodriguez
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$12,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 14 November 2011, Michael Rodriguez (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$12,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant works as a server at Olive Garden and a casino dealer at Isle of Capri Casino in the Biloxi, Mississippi region.¹ The Claimant asserted that he submitted a claim to the GCCF for both jobs, but was only paid for the loss of wages from Olive Garden.² The Claimant stated that he was told by the GCCF that they were not paying casino workers, so he went ahead and filed a Final Payment claim with the GCCF and accepted a settlement of \$5,000.00 for his losses from Olive Garden.³

Several months after accepting Final Payment from the GCCF, the Claimant discovered that his co-workers at the casino had begun receiving payments from the GCCF.⁴ Therefore, the Claimant now requests compensation for damages from his employment at Isle of Capri Casino.⁵ Regarding his loss at the casino, the Claimant asserted that both his hours and tips were reduced due to the Deepwater Horizon oil spill.⁶

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

¹ Letter of claim explanation from the Claimant, undated.

² Letter of claim explanation from the Claimant, undated.

³ Letter of claim explanation from the Claimant, undated.

⁴ Letter of claim explanation from the Claimant, undated.

⁵ Letter of claim explanation from the Claimant, undated.

⁶ Optional OSLTF Claim Form, dated 03 November 2011.

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any loss of income was due to injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for:

- (a) All income resulting from the incident;
- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

The Claimant's Submission to the OSLTF

In support of his claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 03 November 2011;
- Letter of claim explanation from the Claimant, undated;
- Calculation of damages by the Claimant;
- Letter of claim explanation from the Claimant (2), undated;
- Pay stubs from Isle of Capri Casino for the periods: 14 December 2009 – 21 February 2010, 8 March 2010 – 13 June 2010, and 28 June 2010 – 28 July 2010;
- 2010 Form 1040 U.S. Individual Income Tax Return;

- 2009 Form 1040 U.S. Individual Income Tax Return;
- 2009 Form W-2 Wage and Tax Statement from GMRI, Inc.;
- 2009 Form W-2 Wage and Tax Statement from Riverboat Corp of Mississippi;
- 2010 Form W-2 Wage and Tax Statement from GMRI, Inc.; and
- 2010 Form W-2 Wage and Tax Statement from Riverboat Corp of Mississippi.

Prior to presenting this Claim to the NPFC, the Claimant received \$1,000.00 in Emergency Payments from the GCCF.⁷ The Claimant also filed an Interim 1 (ICQ12001) claim with the GCCF for loss of earnings on 05 January 2011.⁸ The Claimant was assigned Claimant ID # 1009701 and Claim ID # 9167024. The Claimant was offered a Final Payment offer of \$5,000.00.⁹ The Claimant accepted the Final Payment offer on 07 March 2011.¹⁰ The Claimant later presented a Full Review Final (FRF) claim to the GCCF for loss of earnings on 27 September 2011 in the amount of \$13,200.00.¹¹

NPFC Determination

The claim is denied. Under 33 C.F.R. §§ 136.105(a) and 136.105(e)(6), the Claimant bears the burden of providing to the NPFC all evidence, information and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant.

This claim is denied because, (1) the Claimant has accepted Final Payment from the GCCF, waiving any rights he may have to recover damages from the OSLTF regarding this incident, and (2) the Claimant has not demonstrated he experienced a financial loss due to the Deepwater Horizon oil spill.

1. Release of Rights to the GCCF

Based on the information available to the NPFC, the Claimant has accepted a Final Payment from the RP/GCCF in the amount of \$5,000.00.¹² The Claimant has executed a Release and Covenant Not To Sue in return for this Final Payment.¹³ By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury.¹⁴ The Release executed by the Claimant specifically states:

[i]n consideration of payment in the amount of \$5,000.00, Claimant hereby releases and forever discharges, and covenants not to sue BP Exploration & Production Inc. (“BP”) and the other Released Parties, [. . .] for any losses, damages, costs, expenses, injuries, claims, causes of actions, liabilities, or other relief that Claimant has or may have [. . .] arising from or relating in any way to the [Deepwater Horizon oil spill].¹⁵

Furthermore, language in the document states that:

Released Parties means anyone who is or could be responsible or liable in any way for the [Deepwater Horizon oil spill] or any damages related thereto, whether a person, company or governmental entity, including (but not limited to) BP, other potentially

⁷ Determination Letter on Interim Payment/Final Payment Claim, dated 26 February 2011.

⁸ Report from the GCCF, dated 5 December 2011.

⁹ Determination Letter on Interim Payment/Final Payment Claim, dated 26 February 2011.

¹⁰ GCCF Claimant Status Page.

¹¹ Report from the GCCF, dated 5 December 2011.

¹² GCCF Claimant Status page; Letter of claim explanation from the Claimant, undated; Report from the GCCF dated 5 December 2011.

¹³ GCCF Release and Covenant Not to Sue dated 09 March 2011.

¹⁴ GCCF Release and Covenant Not to Sue dated 09 March 2011.

¹⁵ GCCF Release and Covenant Not to Sue dated 09 March 2011.

responsible or liable parties, including but not limited to the parties listed in Attachment A to this Release, the federal Oil Spill Liability Trust Fund and any state or local fund, and each of their respective Affiliates as defined above.¹⁶

Therefore, the Claimant has waived rights to further recovery regarding the losses presented to the NPFC. Any payment from the OSLTF requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover from the OSLTF.

Although the Claimant asserted that the damages presented to the NPFC are for a separate job than the one for which he was compensated by the GCCF, the release signed by the Claimant explicitly provides that the Final Payment encompasses all economic damages related to the Deepwater Horizon oil spill.

2. No Loss Due to the Oil Spill

The supporting documentation submitted by the Claimant fails to prove that the Claimant experienced a financial loss due to the Deepwater Horizon oil spill. The Claimant had earnings of \$18,932.18¹⁷ in 2010 from the casino, compared to earnings of \$11,876.42¹⁸ in 2009. Further, although the Claimant asserted that he averaged \$2000.00 per month prior to the Deepwater Horizon oil spill and only \$1000.00 per month after the oil spill,¹⁹ the Claimant's paystubs indicate that the Claimant's earnings actually increased after the Deepwater Horizon oil spill.²⁰

In addition, the Claimant asserted that his losses from the Deepwater Horizon oil spill continued through to the summer of 2011.²¹ However, the Claimant's paystubs indicate that his earnings were higher in January through April of 2011 than his earnings in the same period in 2010.²²

This claim is denied because (1) the Claimant accepted Final Payment from the GCCF, releasing his rights regarding losses related to the Deepwater Horizon oil spill to the RP/GCCF, and (2) the Claimant failed to demonstrate that he suffered a financial loss due to the injury, destruction or loss of property or natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *12/8/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁶ GCCF Release and Covenant Not to Sue dated 06 July 2011.

¹⁷ 2010 Form W-2 Wage and Tax Statement from Riverboat Corp of Mississippi.

¹⁸ 2009 Form W-2 Wage and Tax Statement from Riverboat Corp of Mississippi.

¹⁹ Calculation of damages by the Claimant.

²⁰ Pay stubs from Isle of Capri Casino for the periods: 14 December 2009 – 21 February 2010, 8 March 2010 – 13 June 2010, and 28 June 2010 – 28 July 2010.

²¹ Calculation of damages by the Claimant.

²² Pay stubs from Isle of Capri Casino for the periods: 14 December 2009 – 21 February 2010, 8 March 2010 – 13 June 2010, and 28 June 2010 – 28 July 2010.